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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant(s): **Brian Gonsalves, et al.**

Title: **SYSTEM AND METHOD FOR PROVIDING MANAGED POINT TO POINT SERVICES**

App. No.: **10/669,171**

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**BOARD OF PATENT APPEALS
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BRIEF IN SUPPORT OF APPEAL

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I. REAL PARTY IN INTEREST (37 C.F.R. § 41.37(c)(1)(i))

The Real Party in Interest in the present Appeal is **SBC Knowledge Ventures, L.P.**, the assignee, of patent application no. **10/669,171**, as evidenced by the assignment set forth at Reel **014336**, Frame **0655**.

II. RELATED APPEALS AND INTERFERENCES (37 C.F.R. § 41.37(c)(1)(ii))

With respect to other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in this appeal, Appellant is not aware of any such appeals or interferences.

III. STATUS OF CLAIMS (37 C.F.R. § 41.37(c)(1)(iii))**A. Total Number of Claims in Application**

There are 9 claims pending in the application (claims 16-24).

B. Status of All the Claims

Claims 16 and 24 are independent claims. According to paragraph 1 of the Office Action dated December 13, 2005, the Examiner states that Claims 16-24 stand rejected, and are hereby appealed. Claims 1-15 have been canceled in the Amendment filed concurrently with this Appeal Brief.

C. Claims on Appeal

There are 9 claims on appeal (claims 16-24).

IV. STATUS OF AMENDMENTS (37 C.F.R. § 41.37(c)(1)(iv))

An amendment after final rejection canceling claims 1-15 to simplify issues for appeal has been filed concurrently with the present Appeal Brief pursuant to 37 C.F.R. § 41.33(b)(1). The cancellation of claims 1-15 does not affect the scope of any other pending claim in the proceeding.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER (37 C.F.R. § 41.37(c)(1)(v))

The subject matter of Claim 16 can be summarized as follows:

A network services method, including initiating at least a portion of a point-to-point protocol communication link to a video content source in response to a request for connection, tracking a metric associated with communication of the information stream output by the video content source, and generating a billing record at least partially based on the metric.

Claim 16 finds support from at least Figure 2 and page 13, paragraph [0044] – page 17, paragraph [0059], and in particular paragraphs [0044], [0053] and [0054] of the specification.

The subject matter of Claim 17 can be summarized as follows:

A network services method, including notifying a user of a cost associated with accessing a video content source and accepting from the user payment input indicating a method of paying the cost, prior to initiating at least a portion of a point-to-point protocol communication link to a video content source in response to a request for connection, tracking a metric associated with communication of the information stream output by the video content source, and generating a billing record at least partially based on the metric.

Claim 17 finds support from at least Figure 2, and page 13, paragraph [0044] – page 17, paragraph [0059], and in particular paragraphs [0044], [0050]-[0051] and [0053]-[0054] of the specification.

The subject matter of Claim 18 can be summarized as follows:

A network services method, including receiving a spoken directive from a calling party, converting the spoken directive into a request for connection to a video content source, initiating formation of at least a portion of a point-to-point protocol communication link with the video content source, tracking a metric associated with communication of the information stream output by the video content source, and generating a billing record at least partially based on the metric.

Claim 18 finds support from at least Figure 2 and page 7, paragraph [0021], page 8, paragraph [0026], page 13, paragraph [0044] – page 17, paragraph [0059], and in particular paragraphs [0033], [0044]-[0049] and [0053]-[0054] of the specification.

The subject matter of Claim 19 can be summarized as follows:

A network services method, including maintaining a list of available content sources including a video content source and a unique address for the video content source, receiving a request for connection to the video content source, notifying a user sending the request of a cost associated with accessing the video content source, coupling the user and the video content source with at least one point-to-point protocol over Ethernet link and at least one point-to-point over asynchronous transfer mode link, tracking a metric associated with communication of the information stream output by the video content source, and generating a billing record at least partially based on the metric.

Claim 19 finds support from at least Figure 2 and page 13, paragraph [0044] – page 17, paragraph [0059], and in particular paragraphs [0033], [0044]-[0049] and [0053]-[0054] of the specification.

The subject matter of Claim 20 can be summarized as follows:

A network services method, including initiating at least a portion of a point-to-point protocol communication link to a video content source in response to a request for connection, tracking a communication duration, information throughput, quality of service, and peak bandwidth associated with communication of the information stream output by the video content source, and generating a billing record at least partially based on the communication duration.

Claim 20 finds support from at least Figure 2 and page 13, paragraph [0044] – page 17, paragraph [0059], and in particular paragraphs [0044] and [0053]-[0054] of the specification.

The subject matter of Claim 21 can be summarized as follows:

A network services method, including initiating at least a portion of a point-to-point protocol communication link to a video content source in response to a request for connection, converting a variable bit rate stream output by the video content source into a constant bit rate stream, tracking a metric associated with communication of the information stream output by the video content source, and generating a billing record at least partially based on the metric.

Claim 21 finds support from at least Figure 2 and page 13, paragraph [0044] – page 17, paragraph [0059], and in particular paragraphs [0044] and [0052]-[0054] of the specification.

The subject matter of Claim 24 can be summarized as follows:

A computer-readable medium having computer-readable data tangibly embodying a program of instructions for initiating at least a portion of a point-to-point protocol communication link to a video content source in response to a request for connection, tracking a metric associated with communication of the information stream output by the video content source, and generating a billing record at least partially based on the metric.

Claim 24 finds support from at least Figure 2 and page 13, paragraph [0044] – page 17, paragraph [0059], and in particular paragraphs [0044], [0052]-[0054] and [0061]-[0062] of the specification.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL (37 C.F.R. § 41.37(c)(1)(vi))

Claims 16-24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Swart et al. (U.S. Pub. No. 2003/0028890, referred to as "Swart" hereinafter).

VII. ARGUMENT (37 C.F.R. § 41.37(c)(1)(vii))

Appellant respectfully appeals each of the rejections applied against all claims now pending on appeal. Appellant notes that all claims presently on appeal do not stand or fall together. Instead, each separately argued group of claims stands or falls as a group.

A. CLAIMS 16, 22 and 23 ARE ALLOWABLE OVER SWART

1. Independent Claim 16 is allowable over Swart

Swart fails to disclose or suggest the specific combination of claim 16. For example, Swart does not disclose or suggest receiving a request for connection to a video content source, as recited in claim 16. Instead, Swart discloses receiving a request for specific video program criteria, such as Titanic or Tarzan. *See Swart*, p. 5, para. [0062].

As a further example, Swart does not disclose or suggest tracking a metric associated with communication of the information stream, as recited in claim 16. Instead, Swart discloses tracking metrics associated with the information content, such as proper content delivery and completion of content delivery. *See Swart*, p. 7, para. [0072]. Although content may be communicated via an information stream, content is not communication. Tracking a metric based on content does not render obvious tracking a metric associated with communication of the information stream across a point-to-point protocol communication link, as recited in claim 16.

As a further example, Swart does not disclose or suggest generating a billing record at least partially based upon the metric associated with communication of the information stream, as recited in claim 16. Instead, Swart discloses billing in response to content, such as a content fee and copyright billing. *See Swart*, p. 7, para. [0072]. Billing

based on content delivery is not the same as, and cannot render obvious, billing at least partially based on the communication of the information stream.

Simply put, Swart discloses a system at a level of abstraction that is content-centered – content is requested, content is searched, content is retrieved, content is delivered, and the customer is billed based on content consumed. The system of Swart does not care how the content is delivered, as long as it is delivered. Because Swart does not disclose or suggest receiving a request for connection to a video content source operable to output an information stream, tracking a metric associated with communication of the information stream, or generating a billing record at least partially based upon the metric, as recited in claim 16, the rejection is improper. Appellant respectfully submits claim 16 is allowable.

2. Claims 22 and 23 are allowable over Swart

Because independent claim 16 is allowable, dependent claims 22 and 23 are also allowable.

B. CLAIM 17 IS ALLOWABLE OVER SWART

Swart fails to disclose or suggest the specific combination of claim 17. Swart searches and retrieves content, in contrast to initiating and managing point-to-point protocol connections. For example, Swart does not disclose or suggest notifying a user sending a request for connection to a video content source of a cost associated with accessing the video content source, as recited in claim 17. Instead, Swart generates billing in response to content, such as a content fee and a copyright fee. *See Swart*, p. 7, para. [0072]. As a further example, Swart also does not disclose or suggest accepting a payment input from the user indicating a method of paying the cost prior to initiating formation of the at least a portion of the point-to-point communication link, as recited in claim 17.

Because Swart does not disclose or suggest at least one element of claim 17, and also because of its dependency from claim 16, claim 17 is allowable.

C. CLAIM 18 IS ALLOWABLE OVER SWART

Swart fails to disclose or suggest the specific combination of claim 18. For example, Swart does not disclose or suggest receiving a spoken directive from a calling party, as recited in claim 18. Swart also does not disclose or suggest converting the spoken directive into the request for connection to a video content source operable to output an information stream, as recited in claim 18.

Because Swart does not disclose or suggest at least one element of claim 18, and also because of its dependency from claim 16, claim 18 is allowable.

D. CLAIM 19 IS ALLOWABLE OVER SWART

Swart fails to disclose or suggest the specific combination of claim 19. Swart does not disclose or suggest maintaining a list of available content sources, the list including the video content source and a unique address for the video content source, as recited in claim 19.

In contrast to claim 19, Swart discloses receiving a request for video content and performing a search for requested content. See Swart, p. 3, para. [0044]-[0045]. In fact, Swart may search “virtually every active and scheduled radio and television channel in the world” for “programming or other content to download based on the search results.”

Maintaining a list of content sources as in claim 19, including unique addresses, is beneficial to a network management system in establishing a connection to a requested source. It is not beneficial to a system, such as Swart, that responds to content requests by performing a worldwide search for the content. Swart thus provides no motivation for maintaining a list of available content sources containing a unique address for the video content source, as recited in claim 19.

Swart also does not disclose or suggest notifying a user sending a request for connection to a video content source of a cost associated with accessing the video content source, as recited in claim 19. Instead, Swart generates billing in response to content, such as a content fee and a copyright fee. See Swart, p. 7, para. [0072].

Because Swart does not disclose or suggest at least one element of claim 19, and also because of its dependency from claim 16, claim 19 is allowable.

E. CLAIM 20 IS ALLOWABLE OVER SWART

Swart fails to disclose or suggest the specific combination of claim 20. Swart searches and retrieves content, in contrast to initiating and managing point-to-point protocol connections.

Swart does not disclose or suggest tracking a metric associated with communication of the information stream, where the metric is connection duration, tracking information throughput, tracking quality of service, and tracking peak bandwidth, as recited in claim 20. Contrary to the Examiner's assertions, paragraphs [0020], [0056], [0059], and [0109] of Swart do not disclose tracking information throughput or connection duration associated with communication of an information stream. See Office Action of Dec. 13, 2005, p. 5. Instead, Swart discloses tracking metrics associated with the information content, such as proper content delivery and completion of content delivery. See Swart, p. 7, para. [0072]. Because Swart is directed to providing content and not directed to managing point-to-point protocol connections, Swart provides no motivation for tracking connection duration, information throughput, quality of service, and peak bandwidth as metrics of a connection to a video source, as recited in claim 20.

Because Swart does not disclose or suggest at least one element of claim 20, and also by virtue of its dependency from claim 16, claim 20 is allowable.

F. CLAIM 21 IS ALLOWABLE OVER SWART

Swart fails to disclose or suggest the specific combination of claim 21. Swart simply does not disclose or suggest converting a variable bit rate stream of a video content source into a constant bit rate stream, as recited in claim 21. Because Swart does not disclose or suggest at least one element of claim 21, and also because of its dependency from claim 16, claim 21 is allowable.

G. CLAIM 24 IS ALLOWABLE OVER SWART

Swart fails to disclose or suggest the specific combination of claim 24. Swart searches and retrieves content, in contrast to initiating and managing point-to-point protocol connections.

Swart also does not disclose or suggest a computer-readable medium having computer-readable data tangibly embodying a program of instructions to manipulate a processor to receive a request for connection to a video content source operable to output an information stream, to issue a notification of a cost associated with accessing a video content source, to accept a prepayment input indicating a method of paying the cost, to track a metric associated with communication of the information stream, and to generate a billing record at least partially based upon the metric, as recited in claim 24.

In particular, Swart does not disclose or suggest receiving a request for connection to a video content source, as recited in claim 24. For example, a user of an illustrative embodiment may request a connection by providing a phone number of the desired video source. *See* Application, para. [0049]. Instead, Swart discloses receiving a request for specific video program content, such as Titanic or Tarzan. *See* Swart, p. 5, para. [0062].

Swart also does not disclose or suggest issuing a notification of a cost associated with accessing the video content source, as recited in claim 24. Instead, Swart generates billing in response to content, such as a content fee and a copyright fee. *See* Swart, p. 7, para. [0072]. Further, Swart does not disclose or suggest accepting a prepayment input indicating a method of paying the cost of the access, as recited in claim 24.

Swart does not disclose or suggest tracking a metric associated with communication of the information stream, as recited in claim 24. Instead, Swart discloses tracking metrics associated with the information content, such as proper content delivery and completion of content delivery. *See* Swart, p. 7, para. [0072].

Swart does not disclose or suggest generating a billing record at least partially based upon the metric associated with communication of the information stream, as

recited in claim 24. As one example, an illustrative embodiment may generate a billing record based on quality of service and peak bandwidth of the communication connection. See Application, para. [0053]. Instead, Swart discloses billing in response to content, such as a content fee and copyright billing. See Swart, p. 7, para. [0072].

For at least the foregoing reasons, Appellant respectfully submits that the present application is in condition for allowance and reconsideration is respectfully requested.

VIII. CLAIMS APPENDIX (37 C.F.R. § 41.37(c)(1)(viii))

The text of each claim involved in the appeal is as follows:

16. A network services method comprising:

receiving a request for connection to a video content source operable to output an information stream;

determining an address for the video content source;

initiating formation of at least a portion of a point-to-point protocol communication link with the video content source;

tracking a metric associated with communication of the information stream; and

generating a billing record at least partially based upon the metric.

17. The method of claim 16, further comprising:

notifying a user sending the request of a cost associated with accessing the video content source; and

accepting a payment input from the user indicating a method of paying the cost prior to initiating formation of the at least a portion of the point-to-point communication link.

18. The method of claim 16, further comprising:

receiving a spoken directive from a calling party; and

converting the spoken directive into the request for connection.

19. The method of claim 16, further comprising:

maintaining a list of available content sources, the list including the video content source and a unique address for the video content source;

notifying a user sending the request of a cost associated with accessing the video content source; and

communicatively coupling the user and the video content source with at least one point-to-point protocol over Ethernet link and at least one point to point over asynchronous transfer mode link.

20. The method of claim 16, wherein the metric is connection duration, further comprising:

tracking information throughput;

tracking quality of service; and

tracking peak bandwidth.

21. The method of claim 16, wherein the output stream comprises a variable bit rate stream, further comprising converting the variable bit rate stream into a constant bit rate stream.

22. The method of claim 16, further comprising sending an output request to the video content source operable to cause the video content source to toggle from a no output state to an output state.

23. The method of claim 16, wherein at least a portion of the request comprises a format selected from the group consisting of a dual tone multi-frequency signal, a TCP/IP packet, and a voice signal.

24. A computer-readable medium having computer-readable data tangibly embodying a program of instructions to manipulate a processor to receive a request for connection to a video content source operable to output an information stream, to determine an address for the video content source, to initiate formation of at least a portion of a point to point communication link with the video content source, to issue a notification of a cost associated with accessing the video content source, to accept a prepayment input indicating a method of paying the cost, to track a metric associated with communication of the information stream, and to generate a billing record at least partially based upon the metric.

IX. EVIDENCE APPENDIX (37 C.F.R. § 41.37(c)(1)(ix))

(N/A)

X. RELATED PROCEEDINGS APPENDIX (37 C.F.R. § 41.37(c)(1)(x))

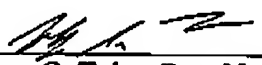
(N/A)

XI. CONCLUSION

For at least the above reasons, all pending claims are allowable and a notice of allowance is courteously solicited. Please direct any questions or comments to the undersigned attorney at the address indicated. Appellant respectfully requests reconsideration and allowance of all claims and that this patent application be passed to issue.

Respectfully submitted,

Date

5-23-2006

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